United Nations A/HRC/28/NGO/117

General Assembly

Distr.: General
25 February 2015

English only

Human Rights Council
Twenty-eighth session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by the Friends World Committee for Consultation, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

16 February 2015

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.15-03532 (E)
1503532

Please recycle

Procedural Rights, Peacebuilding and the Prevention of Destructive Conflict around Water, Land and Food

Friends World Committee for Consultation (Quakers) welcomes the report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment. We are pleased to see the attention given to good practices of all stakeholders – local communities, Indigenous peoples, states and businesses – and there is much here to inspire and adapt for those seeking to further human rights in relation to the environment. We agree with the Independent Expert when he speaks of the "many innovative and exemplary efforts being made to bring a human rights perspective to environmental protection"[1] and we would like to point to the close link to the prevention of destructive conflict.[2]

Our comments in this statement will refer principally to the following categories used in the report: (c) the obligation to facilitate public participation in environmental decision-making and (i) obligations relating to those in vulnerable situations.

Procedural rights - to information, participation and remedy[3] - help underpin inclusive and participatory decision making that is crucial to prevent destructive conflict - and even violence - around natural resources. The recognition of procedural rights alone, however, will not ensure the effective participation of all stakeholders, especially vulnerable and marginalized groups, such as women, the poorest and those facing stigma.

Poorly planned, exclusive environmental decision making can create, or exacerbate, destructive conflict, contributing to a breakdown of communication among groups, damaging social relations or escalating tensions that can lead to violence. In contrast, successfully implemented procedural rights can help give all stakeholders, including marginalized and vulnerable groups, a voice in environmental decision making, helping to build sustainable and peaceful environments for everyone.

In order to participate effectively in decisions relating to the environment it is necessary to have access to all the relevant information, and both access to information and participation in decision making mean little if there are no review mechanisms and access to justice in place when such rights are denied. However, there are also other important factors relevant to the fulfilment of procedural rights with regard to the environment. In many environmental matters there is a potential for injustice and conflict within and between social groups. In order to be able to respond to conflict constructively, local communities and other stakeholders need the capacity to analyse the situation, understand the options available to them and articulate their needs and aspirations. This is where peacebuilding approaches can contribute.

In short:

- Procedural rights in relation to the environment can help prevent destructive conflict
- Peacebuilding approaches can help make procedural rights in relation to the environment effective

[1] Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, February 2015

[2] Conflict in itself is not negative. It is an inevitable part of life and can function as a motor for change and development in society if handled constructively. Conflict becomes destructive when it leads to a breakdown of communication among groups, damaging social relations and exacerbating tensions that can lead to violence.

[3] Knox, Op.cit, paragraph 31 of the Report

When we refer to peacebuilding, we understand by that term both the development of human and institutional capacity for resolving conflicts without violence, and the transformation of the conditions that generate destructive conflict. In this sense it is closely allied to the prevention of destructive conflict and is not only relevant to post-conflict settings.

Peacebuilding approaches focus on building capacity among local communities, building opportunities and providing tools for social groups to understand their own and others' needs and resolve conflicts constructively within and between communities. Peacebuilding approaches also address confidence issues and power imbalances that often affect decision making, as well as seeking to strengthen non-violent communication skills. Individuals and groups can then engage in joint problem solving with other stakeholders, developing solutions and environmental management plans that are legitimate and accepted by all parties. Such work helps lay the foundations necessary for social groups to respond effectively to the environmental information with which they are provided and the opportunities to participate in decision making which constitute, in part, the exercise of their human rights in relation to the environment.

The Independent Expert highlights in category (i) of his report, obligations to those in vulnerable situations. It is essential to prevent discrimination through special efforts to include marginalized and vulnerable stakeholders, such as women, the poorest and those facing stigma or oppression.

These stakeholders are often excluded from decision making processes even when there are opportunities for the public to input into environmental policy. It is often difficult to reach all community groups without careful planning and consideration of the needs and challenges each group faces. For instance, the time, place and format of public discussions and training workshops can inhibit the access and participation of some groups; it is essential to accommodate young peoples', women's or other marginalised groups' responsibilities with school, paid or unpaid work, childcare or livelihood activities, to ensure the full participation of all groups affected. In some areas, such lack of access is related to wider patterns of social exclusion and discrimination, presenting other challenges that need to be addressed in order to secure full and effective participation

Good Practice Examples

We were very pleased to see reference to the work of our colleagues in Namati/ CTV /LEMU/SDI and Natural Justice in the report of the Independent Expert, particularly because we believe that these examples illustrate the mutually reinforcing nature of human rights and peacebuilding approaches. In Paragraph 47 of the report, reference is made to the facilitation of public participation in decision making on environmental matters by Namati, which together with its partner organizations - CTV (Centro Terra Viva – Mozambique), LEMU (Land & Equity Movement in Uganda) SDI (Sustainable Development Institute – Liberia), is currently running Community Land Protection Programs in Liberia, Uganda, and Mozambique. Their approach uses grassroots paralegals and this model is influencing practice in other settings, including Myanmar, Kenya, and North Dakota, United States.

Namati and their colleagues work with local communities using legal empowerment and participatory peacebuilding approaches to create positive change around rural environmental management. They state that "[t]o be most effective, community land documentation activities should combine: 1) the *technical* work of mapping and titling community lands with 2) the *peace-building* work of land conflict resolution and 3) the *governance* work of strengthening land and natural resource management and ensuring intra-community equity[4].

They help bring together social groups that share an environment (such as a common grazing area or wetland) to analyse their needs and aspirations, document community rules for land and natural resource use, and facilitate communities to resolve their own land-based conflicts in order to document their communal land claims. "[W]ell

[4] Namati/ CTV /LEMU/SDI's submission to the Independent Expert's call for good practice examples

facilitated, community land documentation efforts may help to protect rural communities' land claims, livelihoods, and way of life, reduce conflict and instability in the long term, promote environmental sustainability, improve women's participation in decision-making, and foster endogenously-driven community development." [5]
In a similar way, our colleagues at Natural Justice work with biocultural community protocols (BCPs), as referred to in the Independent Expert's report[6], which provide a community, or group of communities, the ability to set out for others:

- Who they are;
- The relationships between their land, natural resources, culture and traditional knowledge;
- Their aspirations and related challenges; and
- Claim the full spectrum of rights that support them under customary, national and international law.[7]

This methodology combines legal empowerment with community organization, in effect using peacebuilding approaches, to help communities develop local strategies to to access their rights and define local responsibilities.

The Role of the Various Stakeholders in facilitating public participation in decision-making on environmental issues

As mentioned, the procedural rights discussed here require more than legal implementation, they require certain preconditions in order to be effective. There is, rightly, much focus on building the confidence and capacity of local communities in order to make effective use of their procedural rights, however, new skill sets and attitude change is needed at all levels. Capacity building is also needed within relevant national and local government departments so they are able to take on a more facilitative role in supporting collective decision making that responds to local needs in environmental matters.

The Independent Expert refers in his report to the Guiding Principles on Business and Human Rights.[8] These call for businesses to meaningfully engage with groups who will be affected by their business activities. Businesses are increasingly aware of the importance of engaging with local communities throughout the process of a business activity, starting at the planning stages of a project. This is particularly important in projects that affect local access to, and control of, natural resources such as land, water and food.

Despite clear legal obligations, business-community engagement is too often superficial, leading to distrust and frustration among local communities[9]. Business projects that do not recognize the legal rights of local communities, or give them an insufficient voice in decision making, can lead to conflict, and even violence. Businesses are increasingly learning that such negative impacts affect the medium and long term effectiveness and success of business projects.

Some companies are already aware of the need to improve their understanding of the social, cultural and political context within which they are operating. Improving their knowledge of the rights of local communities is a key element of this, as well as understanding that local communities are not one distinct, homogenous group, but often a community with different and competing interests. This does not diminish their individual and collective rights relating to natural resources. To respond to the realities of company-community engagement rather than implementing pre-conceived

[5] Ibid
[6] Knox, op.cit. paragraph 102
[7] Natural Justice's submission to the Independent Expert's call for good practice examples
[8] Knox, op.cit.paragraph 79
[9] See, for example, Minority Rights Group International (2012) State of the World's Minorities and Indigenous Peoples 2012: Focus on Land Rights and Natural Resources, Minority Rights Group International, UK

directives, company officials require capacity building to develop new skills associated with facilitation, exploration, analysis and planning.

To develop effective multi-stakeholder platforms and other dialogue processes, it is necessary for companies to build partnerships with local groups and capacity builders at the early planning stages of a project. This takes time, but this time investment is critical for the medium and long term effectiveness of business projects. Such partners can help play a mediating role in company-community negotiations, as well as facilitate better understanding of customary use of land, water and other natural resources among local communities. In order to effectively respect human rights community engagement needs to be built into the underlying strategy of a business project, including integration into internal reporting and monitoring processes, and the development of meaningful accountability and grievance mechanisms

The Impact of Climate Change

The Independent Expert chose to take climate change as one of his thematic focuses during the past year and he states that "[c]limate change may be the most challenging international environmental threat to human rights"[10] . Indeed climate change makes it increasingly urgent to address procedural rights and their contribution to the constructive handling of conflict. Rising greenhouse gas emissions will lead to greater uncertainty in precipitation levels, growing seasons, extreme weather events and significant seasonal temperature increases. Societal resilience to these uncertainties can be increased by putting in place conflict prevention and management systems that relate to the environment. Central to these will be the availability of appropriate and relevant information, the ability of all citizens to participate in environmental decisions that affect them, and access to justice in cases where these rights have been violated. Building a policy environment which respects and protects procedural rights in relation to the environment will provide a solid base from which to address increasing climate uncertainties now and in the coming decades.

[10] Knox, op.cit. paragraph 88